

SUBSTITUTE NO. 1 TO ORDINANCE NO. 12-047

**AN ORDINANCE TO AMEND CHAPTER 2 OF THE CITY
CODE TO ENACT SPECIAL RESPONSIBLE CONTRACTOR
REQUIREMENTS FOR CERTAIN CITY WORK, INCLUDING
APPRENTICESHIP PROGRAM PARTICIPATION, CITY
RESIDENT HIRING, AND CERTIFICATION PROCEDURES.**

Rev.#1
#3704

Sponsors:

**Council
President
Griffiths**

**Council
Members
Kelley
Walsh
Brown
Prado
Shabazz
Potter
Robinson
Wright
Congo**

WHEREAS, the City recognizes that there is a need to ensure that all work on Department of Public Works construction and maintenance contracts is performed by responsible, qualified firms that maintain the capacity, expertise, personnel and other qualifications and resources necessary to successfully perform Department of Public Works contracts in a timely, reliable and cost-effective manner; and

WHEREAS, to effectuate the purpose of selecting responsible contractors for Department of Public Works contracts and to protect the City's investments in such contracts, prospective contractors and sub-contractors, should be required to meet pre-established, clearly defined, minimum standards relating to contractor responsibility, including requirements and criteria concerning technical qualifications, competency, experience, adequacy of resources, including equipment, financial and personnel, and satisfactory records regarding past project performance, safety, law compliance and business integrity; and

WHEREAS, due to the critical impact that skilled construction craft labor has on city projects, and due to the limited availability of skilled construction craft labor and imminent craft labor skill shortages, it is necessary to require contractors and subcontractors to participate in established, formal apprenticeship training programs as a condition of bidding, for the purpose of both promoting successful project delivery and ensuring future workforce development; and

WHEREAS, the City also recognizes that it is beneficial to the local community to ensure that firms receiving Department of Public Works contracts provide adequate wages and benefits to their employees and utilize fair business, employment and training practices that have a positive impact on local communities affected by such contracts.

**THE COUNCIL OF THE CITY OF WILMINGTON HEREBY
ORDAINS:**

SECTION 1. Chapter 2 of the City Code is hereby amended by deleting Subdivision III "Reserved" of Article VI "Finance" Division 6 "Procurement Procedures and Requirements" in its entirety.

SECTION 2. Chapter 2 of the City is further amended by adding thereto a new Subdivision III of Article VI "Finance" Division 6 "Procurement Procedures and Requirements" to read as follows:

Subdivision III. Minimum Standards for Responsible Prospective Contractors on City Work

Sec. 2-561. – Scope and Relation to Existing Law

- (a) For purposes of this Subdivision, the term "city work" shall have the same meaning as "city work" under Section 2-651 of the City Code.
- ★ (b) The requirements of this Subdivision are intended to supplement, not replace, existing contractor qualification and performance standards or criteria currently required by law, public policy or contracting documents. However, in the event that any of the provisions of this Subdivision conflict with any law, public policy or contracting documents of the City, this Subdivision shall prevail.

Sec. 2-562. – Responsible Contractor Requirements on City Work

- (a) All contractors and subcontractors of any tier that perform work valued at over One Hundred Thousand Dollars (\$100,000) on any City work in connection with Department of Public Works contracts and subcontracts shall meet the requirements of this Subdivision, provided, however, that Disadvantaged Business Enterprises, as defined by Section 35-132 of the City Code, shall be exempt from the provisions of Sections 2-563(c)(14) and 2-563(c)(16).
- (b) All firms engaged in contracts covered by this Subdivision shall be qualified, responsible contractors or subcontractors that have sufficient capabilities in all respects to successfully perform contracts on which they are engaged, including the necessary experience, equipment, technical skills and qualifications and organizational, financial and personnel resources. Firms bidding on Department of Public Works contracts shall also be required to have a satisfactory past performance record and a satisfactory record of law

compliance, integrity and business ethics, in accordance with Section 2-537 of the City Code.

Sec. 2-563. – Contractor Responsibility Certifications

- (a) As a condition of performing work on a city work contract subject to this Subdivision, a general contractor, construction manager or other lead or prime contractor seeking award of a contract shall submit a Contractor Responsibility Certification at the time it submits its bid for a contract.
- (b) The Contractor Responsibility Certification shall be completed on a form provided by the City and shall reference the project for which a bid is being submitted by name and contract or project number.
- (c) In the Contractor Responsibility Certification the construction manager, general contractor or other lead or prime contractor shall confirm the following facts regarding its past performance and work history and its current qualifications and performance capabilities:
 - (1) The firm and its employees have all valid, effective licenses, registrations or certificates required by federal, state, county, or local law, including, but not limited to, licenses, registrations or certificates required to: (a) do business in the designated locale; and (b) perform the contract work it seeks to perform. These shall include, but not limited to, licenses, registrations or certificates for any type of construction or maintenance trade work or specialty work which the firm proposes to self-perform.
 - (2) The firm meets the bonding requirements for the contract, as required by applicable law or contract specifications and any insurance requirements, as required by applicable law or contract specifications, including general liability insurance, workers compensation insurance and unemployment insurance.
 - (3) The firm has a satisfactory record of integrity in accordance with Sec. 2-537(4) of the City Code.
 - (4) The firm has a satisfactory record of timely performance of city contracts in accordance with Sec. 2-537(3) of the City Code.
 - (5) The firm has a satisfactory record of performance of contractual provisions in accordance with Sec. 2-537(5) of the City Code.
 - (6) The firm has a satisfactory record of good faith efforts to achieve disadvantaged business enterprise participation in accordance with Sec. 2-537(8) of the City Code.

- (7) The firm has not been debarred or suspended by any federal, state or local government agency or authority in the past three years.
- (8) The firm has not defaulted on any project in the past three years.
- (9) The firm has not had any type of business, contracting or trade license, registration, or other certification revoked or suspended in the past three years.
- (10) The firm and its owners have not been convicted of any crime relating to the contracting business in the past ten years.
- (11) The firm has not at any time been found in violation of any federal, state or local prevailing wage law.
- (12) The firm has not within the past three years been found in violation of any law applicable to its contracting business, including, but not limited to, licensing laws, tax laws, prompt payment laws, wage and hour laws, environmental laws or others, where the result of such violation was the payment of a fine, back pay damages or any other type of penalty in the amount of \$1,000 or more.
- (13) The firm will pay all craft employees that it employs on the project the current wage rates and fringe benefits as required under applicable federal, state or local wage laws.
- (14) All craft labor that will be employed by the firm for the project have completed at least the OSHA 10 hour training course for safety established by the U.S. Department of Labor, Occupational Safety & Health Administration.
- (15) The firm will employ craft employees in all classifications and individual trades required to successfully perform the work related to this project.
- (16) The firm participates in a Class A Apprenticeship Program for the past twelve months, at a minimum, for each separate trade or classification in which it employs craft employees and shall continue to participate in such program or programs for the duration of the project. The twelve month participation requirement may be waived during the first year of implementation of this Ordinance, provided that the firm is participating in a Class A Apprenticeship Program at the time it submits its bid and submits information showing that the construction craft workers it plans to use have adequate skills to successfully perform the project. Once the

Ordinance has been in effect for twelve months, a waiver of this requirement will no longer be available.

- (A) For purposes of this section, a Class A Apprenticeship Program is an apprenticeship program that is currently registered with and approved by the U.S. Department of Labor or a state apprenticeship agency and has graduated apprentices to journeyperson status for at least three of the past five years.
 - (B) To ensure compliance with this subsection, the firm shall provide, with this certification, a list of all trades or classifications of craft employees it will employ on the project and documentation verifying it participates in a Class A Apprenticeship Program for each trade or classification listed.
 - (C) In order to enhance the training of its workforce and to comply with this subsection, the firm must enroll a new person in a Class A Apprenticeship Program for each bid submitted to the City.
- (17) The firm shall make all reasonable best efforts to ensure that fifteen per cent (15%) of the workforce hired for the project, especially with respect to new workers recruited and hired for the project, includes City of Wilmington residents. To ensure compliance with this subsection, the firm will also make residency information on its workforce available to the City upon request.
 - (18) The firm has all other technical qualifications and resources, including equipment, personnel and financial resources, to perform the referenced contract, or will obtain same through the use of qualified, responsible subcontractors.
 - (19) The firm shall notify the City within seven days of any material changes to all matters attested to in this certification.
 - (20) The firm understands that the Contractor Responsibility Certification required by this section shall be executed by a person who has sufficient knowledge to address all matters in the certification and shall include an attestation stating, under the penalty of perjury, that the information submitted is true, complete and accurate.
- (d) Execution of the Contractor Responsibility Certification required by this Subdivision shall not establish a presumption of contractor responsibility and the City may require any additional information it deems necessary to evaluate a firm's status as a responsible contractor, including technical qualifications, financial capacity or other resources and performance capabilities. The City may require that such information be included in a

separate Statement of Qualifications and Experience or as an attachment to the Contractor Responsibility Certification.

- (e) The submitting firm shall stipulate in the Contractor Responsibility Certification that, if it receives a Notice of Intent to Award Contract, it will provide a Subcontractor List and required subcontractor information as specified in section 2-565 of this Subdivision.
- (f) If the submitting firm has ever operated under another name or controls, is controlled by another company or business entity or in the past five years controlled or was controlled by another company or business entity, whether as a parent company, subsidiary or in any other business relation, it shall attach a separate statement to its Contractor Responsibility Certification that explains in detail the nature of any such relationship. Additional information may be required from such an entity if the relationship in question could potentially impact contract performance.
- (g) If a firm fails to provide a Contractor Responsibility Certification required by this section, it shall be disqualified from bidding. No action of any nature shall lie against the City because of its refusal to accept a bid for failing to provide information required by this section.

Sec. 2-564. – Notice of Intent to Award Contract

- (a) After it has received bids for a project, the City shall issue a *Notice of Intent to Award Contract* to the firm offering the lowest responsive bid.
- (b) Such Notice shall be issued immediately or as soon as practicable after bids are submitted and shall stipulate that the contract award will be conditioned on the issuance of a written Contractor Responsibility Determination, as required by section 2-566 of this Subdivision and any other conditions determined appropriate by the City.

Sec. 2-565. – Subcontractor Lists, Subcontractor Responsibility Certifications

- (a) Within seven days from the date of Notice of Intent to Award Contract, a prospective awardee shall submit to the City a Subcontractor List containing the names of subcontractors that will be used for the referenced project, their addresses and a description of the work each listed subcontractor will perform on the project.
- (b) At the time a prospective awardee submits the Subcontractor List it shall also submit Subcontractor Responsibility Certifications for all listed subcontractors to the City. Subcontractor Responsibility Certifications shall be executed by the respective subcontractors on forms prepared by the City and shall contain the same information and representations required in Contractor

Responsibility Certifications, including verification of apprenticeship qualifications as required by Section 2-563(c)(16), for each trade or classification of craft workers it will employ on the project.

- (c) Subcontractor Responsibility Certifications shall be executed by persons having sufficient knowledge to address all matters in the certification and shall include an attestation stating, under the penalty of perjury, that all information submitted is true, complete and accurate.

Sec. 2-566. – Contractor Responsibility Review and Determinations

- (a) After a Notice of Intent to Award Contract has been issued, the City shall undertake a review process for a period of at least 10 days to determine whether the prospective awardee is a qualified, responsible contractor in accordance with the requirements of this Subdivision and other applicable laws and regulations and has the resources and capabilities to successfully perform the contract.
- (b) As part of this review process, the City shall ensure that the Contractor Responsibility Certification, the Subcontractor List and the Subcontractor Responsibility Certifications, as required by this act, have been submitted and properly executed.
- (c) The City may conduct any additional inquiries to verify that the prospective awardee and its subcontractors have the technical qualifications and performance capabilities necessary to successfully perform the contract and that the firms have a sufficient record of law compliance and business integrity to justify the award of a public contract. In conducting such inquiries, the City may seek relevant information from the firm, its prior clients or customers, its subcontractors or any other relevant source.
- (d) If at the conclusion of its internal review, the City determines that all responsibility certifications have been properly completed and executed and if it concludes that the qualifications, background and responsibility of the prospective awardee and the firms on its Subcontractor List are satisfactory, it shall issue a written Contractor Responsibility Determination verifying that the prospective awardee is a qualified, responsible contractor. In the event a firm is determined to be non-responsible, the City shall advise the firm of its finding in writing and proceed to conduct a responsibility review of the next lowest, responsive bidder or, if necessary, re-bid the project.
- (e) The Contractor Responsibility Determination shall be issued at least 10 days after the date of the Notice of Intent to Award Contract. This Responsibility Determination may be revoked or revised in any manner at any time if the City obtains relevant information warranting any such revocation or revisions.

- (f) A firm receiving a contract award pursuant to this section is also expected to meet all other obligations applicable pursuant to the City Code and regulations, including requirements and programs pertaining to disadvantaged business enterprise contracting goals.

Sec. 2-567. – Subcontractor Responsibility Review Requirements

- (a) A construction manager, general contractor or other lead or prime contractor shall not be permitted to use a subcontractor on any work performed for the City unless it has identified the subcontractor on its Subcontractor List and provided a Subcontractor Responsibility Certification in accordance with the requirements of Section 2-565 of this Subdivision.
- (b) A subcontractor listed on a firm's Subcontractor List shall not be substituted unless written authorization is obtained from the City and a Subcontractor Responsibility Certification is provided for the substitute subcontractor.
- (c) In the event that the City determines that a prospective subcontractor listed by the apparent low bidder does not meet the responsibility standards of this Section, it may, after informing the prospective awardee, exercise one of the following options:
 - (1) permit the awardee to substitute a qualified, responsible, subcontractor in accordance with the requirements of this section;
 - (2) require the awardee to self-perform the work in question if the firm has the required experience, licenses and other qualifications to perform the work in question; or
 - (3) disqualify the prospective awardee.
- (d) In the event that a subcontractor is disqualified under this Subdivision, the general contractor, construction manager or other lead or prime contractor shall not be permitted to make any type of contractual claim against the City on the basis of a subcontractor disqualification.

Sec. 2-568. – Public Review Process

- (a) The Contractor Responsibility Certification for a firm identified in a Notice of Intent to Award Contract, Subcontractor Lists and Subcontractor Responsibility Certifications shall be made immediately available to the public for inspection through a publicly accessible website or other comparable means.
- (b) During the Public Review Period, any person or organization may protest a contractor or subcontractor for failing to meet applicable requirements of this

Subdivision or on any other relevant grounds by submitting a letter with supporting evidence to the City.

- (c) If the City determines that a Contractor or Subcontractor Responsibility Certification contains false or misleading material information that was provided knowingly or with reckless disregard for the truth or omits material information knowingly or with reckless disregard of the truth, the firm for which the certification was submitted shall be prohibited from performing work for the City for a period of three years and shall be subject to any other penalties and sanctions, including contract termination, available to the City under law. A contract terminated under these circumstances shall further entitle the City to withhold payment of any monies due to the firm as damages.
- (d) A procurement contract subject to this Subdivision shall not be executed until all requirements of this Subdivision have been fulfilled and until Contractor and Subcontractor Responsibility Certifications and Subcontractor Lists have been made available for public inspection for at least ten days.

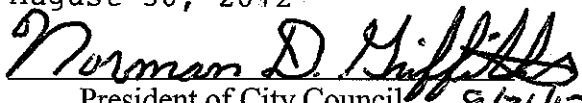
Sec. 2-569. – Severability, Application to Options on Contracts

- (a) If any provision of this Subdivision shall be held to be invalid or unenforceable by a court of competent jurisdiction, any such holding shall not invalidate any other provisions of this Subdivision and all remaining provisions shall remain in full force and effect.
- (b) The requirements of this Subdivision shall not apply to contracts advertised for bid prior to the effective date of this Ordinance, except that the exercise of an option on a contract covered by this Subdivision shall be deemed to create a new contract for purposes of this Subdivision.

SECTION 3. This Substitute Ordinance shall be deemed effective forty-five (45) days after its passage by City Council and approval of the Mayor.

First Reading..... August 23, 2012
Second Reading.... August 23, 2012
Third Reading..... August 30, 2012

Passed by City Council,
August 30, 2012


President of City Council 8/31/12

ATTEST: Maribel Seijo
City Clerk

Approved as to form this
28th day of August, 2012.

Mark Filnick
First Assistant City Solicitor

Approved this 5th day of Aug 2012

J. M. Baker
Mayor

SYNOPSIS: This Substitute Ordinance amends Chapter 2 of the City Code to enact special responsible contractor requirements for certain City work, including apprenticeship program participation, City resident hiring, and certification procedures.

***Note: Amendment on Page 2**

Sec. 2-561(b) is hereby amended by deleting the language that is stricken and by adding the underlined language to read as follows:

The requirements of this Subdivision are intended to supplement, not replace, existing contractor qualification and performance standards or criteria currently required by ~~law~~ City Code, public policy or contracting documents of the City. However, in the event that any of the provisions of this Subdivision conflict with any ~~law~~ provision of the City Code, public policy or contracting documents of the City, this Subdivision shall prevail.